

UNITED STATES
DISTRICT COURT
Northern District of
California

FAX TRANSMISSION

TO:	
FAX NUMBER:	94158756700
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RE:	4:20-cv-03664-YGR Brown et al v.

FROM:	Justine Fanthorpe
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DATE:	2023-01-17
TIME:	16:42:03

SUBJECT:

4:20-cv-03664-YGR Brown et al v. Google LLC et al-Sealed Order

DETAILS:



Justine Fanthorpe

CRD to Magistrate Judge Susan van Keulen

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Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CHASOM BROWN, et al.,

Plaintiffs,

v.

GOOGLE LLC,

Defendant.

Case No. 20-cv-03664-YGR (SVK)

FILED UNDER SEAL

**ORDER ON (1) GOOGLE'S MOTION
FOR RELIEF REGARDING
PRESERVATION, AND (2) PARTIES'
JOINT SUBMISSION RE
PRESERVATION IN LIGHT OF CLASS
CERTIFICATION ORDER**

Re: Dkt. No. 782, 818

Before the Court are several submissions regarding Google's obligations under the Court's May 20, 2022 and August 5, 2022 preservation orders (Dkt. 587, 657 - the "Preservation Orders"). On October 27, 2022, Google filed a motion seeking relief from any obligation under the Preservation Orders to preserve [REDACTED] linking tables and [REDACTED] Analytics mapping tables. Dkt. 782 – the "Motion." Plaintiffs filed an opposition to the Motion, and Google filed a reply. Dkt. 800, 806.

On December 12, 2022, while the Motion was in briefing, District Judge Yvonne Gonzalez Rogers issued an order on Plaintiffs' motion for class certification. Dkt. 803 – the "Class Certification Order." Among other things, in the Class Certification Order the Court denied Plaintiffs' request to certify a damages class under Federal Rule of Civil Procedure 23(b)(3) but granted Plaintiffs' request to certify an injunctive class under Rule 23(b)(2). *Id.*

Following the Class Certification Order, the undersigned granted the Parties' stipulation to file a joint letter brief on the effect of the Class Certification Order on Google's preservation obligations for this case. Dkt. 813. The Parties submitted the joint letter brief on January 6, 2023. Dkt. 818 – the "Letter Brief." In the Letter Brief, Google states that in light of the Class Certification Order, this Court should issue an order (i) releasing Google from its ongoing

1 obligations under the Preservation Orders, and (ii) either (a) authorizing Google to delete the data
2 it has already collected and preserved, or (b) requiring Plaintiffs to cover the cost of such
3 preservation. *Id.* Plaintiffs oppose Google's requested relief. *Id.*

4 The Court held a hearing on January 10, 2023 to address the Motion and Letter Brief. For
5 the reasons stated on the record and as set forth at the hearing, the Court **ORDERS** as follows:

- 6 1. **Tables:** The evidence presented by Google concerning the costs of preserving the
7 tables that are the subject of the Motion, along with Google's assertion that the
8 pertinent information in the tables is contained in or may be derived from other
9 data Google is preserving in this case, raises a concern of the proportionality under
10 Rule 26 of the relative burdens and benefits of the Preservation Orders.
11 Accordingly, at the hearing the Court ordered the Parties to promptly engage in a
12 meet and confer for the purpose of Google demonstrating to Plaintiffs how the
13 information in the tables that are the subject of the Motion is contained in or may
14 be derived from other information that Google is preserving in this case. The Court
15 provided the following to guide the Parties' meet and confer efforts: (1) the Court
16 anticipates that this meet and confer will require Google to provide to Plaintiffs
17 information about the contents of the tables at issue sufficient to demonstrate that
18 pertinent information in the tables is already being preserved or may be derived
19 from preserved data. However, Google will not be required to provide the entire
20 contents of the tables to Plaintiffs; (2) the Court anticipates that technical
21 personnel and/or the Parties' experts will participate in the meet and confer as
22 necessary; and (3) if Plaintiffs insist that all of the disputed tables continue to be
23 preserved in their entirety, the Court is likely to impose cost sharing. The Parties
24 must file a joint status report and proposed path forward on the issue of
25 preservation of the relevant tables by **January 31, 2023**.

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27 2. **Relief Requested by Google in Letter Brief:** As discussed at the hearing,
28 Plaintiffs have filed a petition with the Ninth Circuit seeking permission to appeal

1 the Class Certification Order pursuant to Rule 23(f). *See* Dkt. 812. The filing of
2 the petition does not stay proceedings in district court unless the district judge or
3 court of appeals so orders. Fed. R. Civ. P. 23(f). However, in light of that pending
4 petition, as well as the evidence concerning Google's cost of preserving the data
5 that is the subject of its request in the Letter Brief, the Court **DENIES** Google's
6 request that it be relieved of its ongoing preservation obligations under the
7 Preservation Orders in this case and its request that it be permitted to delete data
8 preserved pursuant to the Preservation Orders in this case or that Plaintiffs be
9 ordered to bear the cost of preserving that data. Denial of Google's requests for
10 relief in the Letter Brief is **WITHOUT PREJUDICE** to renewal of those requests
11 based on subsequent developments.

12 **SO ORDERED.**

13 Dated: January 17, 2023

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16 SUSAN VAN KEULEN
17 United States Magistrate Judge
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